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09/705,514	11/02/2000	Jeffry Jovan Philyaw	PHLY-25,509	6936
25883	7590	04/03/2006	EXAMINER	
HOWISON & ARNOTT, L.L.P. P.O. BOX 741715 DALLAS, TX 75374-1715			POLLACK, MELVIN H	
			ART UNIT	PAPER NUMBER
			2145	

DATE MAILED: 04/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/705,514

Applicant(s)

PHILYAW, JEFFRY JOVAN

Examiner

Melvin H. Pollack

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 24 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 15-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: see attached office action.

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 24 January 2006 have been fully considered but they are not persuasive. An analysis of the arguments is provided below, but concentrates primarily on the definition of certain phrases such as control signal, step of releasing, and presence/access of the location on the network.
2. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "control signal that controls anything other than sequence of output files (P. 6, lines 19-22)") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Absent a narrower definition within the specification, the examiner interprets control signal broadly to be read as any script or program that controls the operation of the kiosk in any way, and certainly as a program to control the kiosk outputs and/or the handling of user inputs. In this case, the control signals control the order of broadcast portions, and further which multimedia data to provide in response to which kiosk event: i.e. which information to provide when a certain UPC code is scanned. While a control signal might perform other activities, i.e. retrieval of other information with or without user intervention, such limitations are not expressly disclosed, nor is the control system defined in the specification to be read so narrowly.

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3. The applicant acknowledges that said control signals may also control local codes and information within the kiosk (P. 7, lines 22-25; P. 8), which further fulfills the definition of control signal as commonly known.

4. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "indicating that a control signal will subsequently follow that will control the operation of some event, such as controlling the display of a computer or gaining information through web access (P. 11, lines 1-7)") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

5. The applicant argues that Stern does not disclose the visual cue being indicative of any relationship between that visual cue and the presence of any location on a network (P. 13, lines 2-3). Applicant acknowledges, however, that the purpose is to distribute advertising to regions associated with those [surrounding] products (P. 13, lines 17-19). The examiner interprets this limitation as meaning that the visual cues (i.e. the multimedia data relating to product information) are matched to items surrounding the kiosk (i.e. visual cues provided to a kiosk near a rack of CDs are associated with information regarding CDs). If the applicant wishes a different interpretation, the specification and/or claims must be amended. As for the usage of both Attract and Scan modes (P. 12), the connection is the usage of multimedia information, which in both cases is related to a product near the kiosk.

6. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "conventional

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broadcast (P. 13, lines 20-24)”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims as currently drawn do not describe or define “a conventional broadcast,” nor the manner of distribution. Stern clearly teaches a multimedia data program transmitted to one or more clients, which fulfills the claims as currently drawn.

7. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., “control signal is utilized to control access to a network or enable a computer to gain access to a location on the network [other than the specific computer] (P. 14, lines 1-2)”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The examiner interprets a Stern kiosk as controlling the computer to be connected to the network as a node, and thus accessing that node location on the network, for multiple purposes including uploading/downloading information, debugging the kiosk, etc.

8. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., “being released during the broadcast (P. 14, lines 6-11)”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The applicant fails to expressly define the term “releasing.” The examiner interprets the

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phrase “releasing a control signal that is part of the broadcast” as the server transmits the control signals along with the multimedia data that will be shown. The aspect of a releasing step occurring while the multimedia data is playing is not currently drawn in the claims.

9. Applicant alleges that Stern does not expressly disclose extracting control information contained in the control signal, and hence from a broadcast (P. 15, lines 3-4). Stern clearly teaches a broadcast of multimedia data – and control signals such as scripts - to the servers. That this information is then stored, either before or after interpretation, is irrelevant.

10. Applicant argues that Stern does not expressly disclose providing the visual cue and releasing the control signal simultaneously (P. 16, lines 17-23). The examiner interprets this as the server sending the visual cues and the control signals at roughly the same time, which Stern clearly teaches in the embodiment provided.

11. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., “output of a visual cue (P. 16)”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The examiner does not consider “output of a visual cue” as functionally equivalent to “providing a visual cue,” nor do the claims specify outputting or providing from a kiosk to a user.

12. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., release of the control information after providing the visual cue (P. 16, line 26 – P. 17, line 6)) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification,

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limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As long as both are downloaded in roughly the same time period, this limitation is fulfilled.

13. The applicant alleges that Stern does not expressly disclose animating the visual cue (P. 17, lines 8-22). Stern teaches the providing of a video visual cue associated with the control signal (i.e. the control signal sets up the visual cue.) Absent a narrower definition of visual cue, this aspect is taught.

14. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). That is, a visual cue for the purpose of attracting the individual to the screen is taught in Stern (P. 18), and therefore does not need to be taught by Portuesi per se.

15. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "visual cue has the purpose of attracting the individual to the screen and getting the user to click on the spot (P. 18, lines 5-16)") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The visual cue definition does not require these items.

16. That said, the characterization of Portuesi's visual cue is inaccurate. Portuesi teaches an embedding of links such that a user may follow the displayed URL (col. 2, lines 15-25 and 40-

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45), said clickable area prominently displayed (col. 3, lines 20-45). In short, techniques are utilized not just to display a visual cue (col. 5, lines 20-40), but to draw attention both to the screen and to the clickable region within the screen (col. 5, line 40 – col. 6, line 40).

17. In response to the claim 9 rejection, the applicant has challenged the Examiner's Official Notice (P. 18, line 17 – P. 19, line 4). Therefore, the examiner will add art for the express and only purpose of responding to the challenge.

18. For the reasons above, this rejection is maintained, and is therefore final.

***Claim Rejections - 35 USC § 102***

19. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

20. Claims 1-7, 16-18, 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Stern et al. (6,591,247).

21. For claim 1, Stern teaches a method (abstract) for facilitating computer based access (col. 1, line 30 – col. 4, line 30) to a location (Fig. 2, #30c) on a network (Fig. 1, #10) by a consumer witnessing a presentation broadcast to the consumer (col. 3, lines 50-55), comprising the steps of:

a. Providing a visual cue during the presentation broadcast apparent to the consumer (col. 6, lines 35-45) and indicative of a relationship between the visual cue and the presence of the location on the network (col. 6, lines 45-60); and



- b. Releasing a control signal (col. 8, line 65 – col. 9, line 10) that is part of the presentation broadcast (col. 9, lines 1-10) and which control signal is in association with the visual cue (col. 17, lines 10-50), the step of releasing occurring during the presentation broadcast (Fig. 4, #450), and wherein a computer having an input device responsive to the control signal can be controlled (col. 9, lines 49-60) such that the control signal can both be recognized by the input device and control information contained in the control signal can be extracted therefrom (col. 17, lines 5-50) to enable and control the computer to access the location on the network upon the appearance of the visual cue and receipt of the control signal during the presentation broadcast, which control is facilitated from the presentation broadcast with no user intervention (col. 9, lines 50-60).
22. For claim 2, Stern teaches attracting the consumer's attention to the computer for interacting with the location on the network in association with the access thereto (col. 17, lines 5-10).
23. For claim 3, Stern teaches that the step of providing a visual cue precedes the step of releasing the control signal (col. 8, lines 50-65).
24. For claim 4, Stern teaches that the step of releasing the control signal precedes the step of providing a visual cue (col. 20, line 66 – col. 21, line 7).
25. For claim 5, Stern teaches that the steps of providing the visual cue and releasing the control signal occur simultaneously (col. 16, lines 10-20).
26. For claim 6, Stern teaches that the steps of providing the visual cue and releasing the control signal occur within a defined interval of time (col. 9, lines 55-60).

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27. For claim 7, Stern teaches animating the visual cue during its appearance wherein the animation is accompanied by the control signal (col. 12, lines 34-36).

28. For claim 16, Stern teaches that the visual cue (col. 25, lines 33-40) includes a logo (bumper).

29. For claim 17, Stern teaches that the presentation broadcast witnessed by the consumer includes a program having audio and video content (col. 17, lines 25-40).

30. For claim 18, Stern teaches that the presentation broadcast witnessed by the consumer includes a broadcast communication having audio and video content (col. 25, lines 5-59).

31. For claim 20, Stern teaches that the presentation broadcast includes a recorded portion (col. 12, lines 20-25).

***Claim Rejections - 35 USC § 103***

32. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

33. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern as applied to claims 1, 7 above, and further in view of Portuesi (5,987,509).

34. For claim 8, Stern does not expressly disclose detaching one or more moving segments from a stationary portion of the visual cue, and traversing a path with each detached segment about the stationary portion of the visual cue to a predetermined position adjacent thereto.

Portuesi teaches a method (abstract) of displaying visual cues during a broadcast which may then be activated to assist in gaining remote information (col. 1, line 15 – col. 4, line 5) and in which

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this limitation is further taught (col. 6, lines 20-45). At the time the invention was made, one of ordinary skill in the art would have added the Porteusi input method to Stern in order to ensure easier selection of data (col. 3, lines 20-30).

35. For claim 10, Stern does not expressly disclose that the stationary portion of the visual cue forms an iconic figure and the moving segment resembles an element of said iconic figure. Porteusi teaches this limitation (Fig. 4, #40). At the time the invention was made, one of ordinary skill in the art would have added this separation to enable movement of visual cues (col. 3, lines 43-45).

36. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stern and Portuesi as applied to claims 1, 7, and 8 above, and further in view of Miller et al. (6,404,435).

37. For claim 9, Stern and Portuesi do not expressly disclose that the stationary portion of the visual cue forms an alphanumeric character and the moving segment resembles a punctuation mark. Miller teaches a method and system (abstract) of providing broadcast visual cues (col. 1, line 1 – col. 2, line 51), wherein the visual cue includes a series of alphanumeric characters (col. 4, lines 1-5 in view of col. 3, lines 25-30 and 45-46), in which a single character (i.e. a punctuation symbol) may be animated without animating the rest of the string (col. 4, lines 1-5). At the time the invention was made, one of ordinary skill in the art would have added Miller's string modification techniques to Stern and Portuesi in order to limit imaging problems such as visual artifacts (col. 1, lines 35-40).

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38. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stern as applied to claim 1 above, and further in view of Jensen et al. (6,421,445).

39. For claim 11, Stern does not expressly disclose the step of releasing a control signal comprises providing an audible sound signal as a part of the broadcast having a recognizable characteristic that is identifiable each time it occurs by the input device on the computer, the sound signal comprising the control signal. Jensen teaches a method (see abstract) for a broadcast system (col. 1, lines 18-21) in which command signals are embedded in audio signals (col. 2, lines 6-9). At the time the invention was made, one of ordinary skill in the art would have used Jensen in a Stern system in order to fulfill a variety of broadcasting purposes, such as tracking of ratings (col. 31, lines 44-45) and commercials (col. 33, lines 25-30).

40. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stern as applied to claim 1 above, and further in view of Itoh et al. (6,487,719).

41. For claim 15, Stern does not expressly disclose the step of releasing a control signal comprises the step of providing a light signal having a recognizable characteristic that is identifiable each time it occurs by the input device on the computer, the light signal comprising the control signal. Itoh teaches a method (see abstract) in which a monitoring of a broadcast (col. 1, lines 5-15) is achieved through light control signals (col. 3, lines 27-54). At the time the invention was made, one of ordinary skill in the art would have used Itoh to perform channel monitoring (col. 3, lines 1-27).

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42. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stern as applied to claim 1 above, and further in view of Ludwig et al. (6,237,025).

43. For claim 19, Stern does not expressly disclose that the presentation witnessed by the consumer includes a live presentation. Ludwig teaches a method (see abstract) of videoconferencing (col. 21, lines 45-55) in which active URLs may be embedded into the presentation (Fig. 30). At the time the invention was made, one of ordinary skill in the art would have combined the two inventions in order to allow real-time information to be transmitted (col. 4, lines 55-65).

### *Conclusion*

44. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. They regard further teachings on visual cues and animations.

45. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin H. Pollack whose telephone number is (571) 272-3887. The examiner can normally be reached on 8:00-4:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MHP  
28 March 2006

  
JASON CARDONE  
SUPERVISORY PATENT EXAMINER